**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

| | |
|---|---|
| MICHON COLEMAN,<br>Plaintiff and Respondent,<br>v.<br>SAN MATEO COUNTY ASSOCIATION OF REALTORS ET AL.,<br>Defendants and Appellants. | A131714<br><br>(San Mateo County<br>Super. Ct. No. CIV500745) |

Defendants and appellants in this action are the San Mateo County Association of Realtors (SAMCAR), the law firm of Carr, McClellan, Ingersoll, Thompson & Horn (Carr), and various individuals.[1] They contend the trial court erred in denying their anti-

[1] The individual defendants associated with SAMCAR who brought the motion at issue here are Steve Blanton, Eric Berggren, Robert Brisbane, Bobbi Decker, Olivia Edwards, Suzan Getchell-Wallace, Phillip Houston, Karon Knox, Anne Oliva, Dennis Pantano, Jennifer Tasto, Edgar Tulcanaza, Susan Vaterlaus, Diane Wilson, and David Zigal. Collectively with SAMCAR, we will refer to them as the "SAMCAR defendants." John Prouty, Corrin Trowbridge, Frank Vento, and Michael Verdone were not named in the original complaint, but were named as defendants in Coleman's first amended complaint, filed on April 5, 2011, to replace Does 1 through 4, after they joined SAMCAR's Board of Directors. The appellate briefs filed by the SAMCAR defendants appear to have been submitted on behalf of all the above individuals except Vaterlaus. The individual defendants associated with Carr are Valerie Menager and Michelle Leu Zaccone. Collectively with Carr, we will refer to them as the "Carr defendants."

SLAPP (strategic lawsuit against public participation) motions. (Code Civ. Proc.,[2] § 425.16.) We shall affirm the order denying the motions.

## I. BACKGROUND

Plaintiff Michon Coleman brought this action against her employer, SAMCAR, various individuals associated with SAMCAR, and its attorneys, the Carr defendants. As pertinent here, she alleged against the Carr defendants and SAMCAR's Executive Officer**,** Steve Blanton, causes of action for fraud and for civil conspiracy to defraud and defame, and against all defendants causes of action for defamation, compelled self-publication of defamation, civil conspiracy to defraud and defame, violation of Business and Professions Code section 17200, intentional infliction of emotional distress, and negligent infliction of emotional distress.[3] At the heart of Coleman's complaint was the claim that after she expressed concerns about excessive alcohol consumption at SAMCAR events, Blanton initiated a retaliatory "faux investigation" in which he falsely asserted she had instead complained of racial and gender discrimination and hostile workplace environment.

### A. The Allegations of the Complaint

Coleman's complaint alleged that she worked at SAMCAR as Director of Government Affairs. Her supervisor was Blanton, who was hired on May 3, 2010.

On May 26, 2010, Coleman had a meeting with Blanton, Jennifer Tasto, the president of SAMCAR's Board of Directors (the Board), and Sue Vaterlaus, its president-elect. At the meeting, Coleman discussed the "current climate at SAMCAR," and expressed her concern—a concern Tasto shared—that the Board applied "different standards and rules" to different people. She also told Blanton her former supervisor had

---

[2] All undesignated statutory references are to the Code of Civil Procedure.

[3] The eighth cause of action, for civil conspiracy, was alleged against only Blanton and the Carr defendants. The SAMCAR defendants' anti-SLAPP motion challenged only the eighth cause of action, for civil conspiracy. Coleman also alleged a number of other causes of action against the SAMCAR defendants, which are not at issue in this appeal. The Carr defendants challenged the entire complaint in their anti-SLAPP motion.

physically assaulted a colleague and called him his boss's " 'little dog.' " When Coleman intervened, the former supervisor told her, " 'I'm going to treat you like a little dog to get some respect out of you.' " He treated her rudely the next day, and had been violent or offensive on other occasions. Coleman also reported that a previous Board member had berated her and threatened her job, and that a current Board member had written to her and Tasto, wrongfully accusing them of misusing SAMCAR assets for personal financial gain. She reported other unpleasant encounters she had had with members of the Board, including one in which an inebriated Board member accused Coleman of lying and being two-faced and then grabbed Coleman and demanded Coleman hug her.

Coleman raised concerns with Blanton about what she viewed as excessive alcohol consumption at Board dinners and at other events. She reported to Blanton that at a June 10, 2010 Board meeting, Robert Brisbane, one of SAMCAR's directors, who was inebriated, pointed out Coleman's shoes to another director, and the other director told Coleman, " 'He wants to suck your toes they look so good in those shoes.' " After Coleman reported the incident to Blanton, he told her, in Tasto's presence, that he planned to call an executive session of the Board to discuss the incident. Coleman considered the incident an embarrassment and a confidential personnel matter, and did not want it discussed before the Board. She asked Blanton instead to take steps to prevent excessive drinking. A few days later, Blanton told Coleman that SAMCAR's attorneys had advised him to discuss the matter with the Board. Coleman objected to his doing so. Blanton told Coleman that if she did not disclose the names of the Board members who had acted inappropriately, he would raise the matter at an executive session of the Board. Coleman asked Blanton if she needed to protect herself legally, and he replied, " 'Do what you feel you need to do.' " On June 24, 2010, Blanton informed Coleman that because she had made allegations of sexual harassment, race discrimination, and hostile work environment, he was investigating the allegations.[4] In her complaint, Coleman denied having made such allegations.

[4] Coleman is African-American.

In early August, 2010, Blanton expressed interest in having SAMCAR support a political candidate, for instance by coordinating a fundraiser. Coleman believed such an action might violate San Mateo County campaign finance laws and jeopardize SAMCAR's tax-exempt status. (26 U.S.C. § 501(c)(6).) Blanton told the Board Coleman did not do as she was directed.

On August 12, 2010, Coleman's attorney informed SAMCAR that Coleman had concerns about the integrity of the investigation Blanton had initiated "regarding the prevaricated claims of racial discrimination, gender discrimination and hostile workplace environment he falsely accused Plaintiff of making." He stated that his review of the matter raised "serious concerns that call into question the integrity of the investigative process," and that he was "working on a written response" addressing "inaccuracies of numerous factual allegations" Blanton had made in his report "as well as certain procedural anomalies that evince questionable conduct at best, or a concerted effort to discredit and disparage [Coleman] at worst."

On August 18, 2010, SAMCAR received notice that Coleman was concerned about the fact that she had been asked to undertake a self-evaluation as the first step in a performance review process. Valerie Menager, an attorney with SAMCAR's counsel, Carr, wrote to Coleman on August 20, 2010, asserting that SAMCAR had made a good faith investigation of Coleman's allegations, and that the request for a self-evaluation was part of a new process for all SAMCAR employees. The letter indicated, falsely according to Coleman, that Coleman had made allegations regarding other current SAMCAR employees. Coleman alleged the false statement was published to SAMCAR's Board of Directors.

Blanton prepared an investigation report on Coleman's grievances, which Coleman alleged omitted facts she had reported. According to Coleman, the investigation report falsely characterized her grievances as based on claims of gender discrimination, racial discrimination, and hostile workplace environment, and misrepresented the events that occurred at the June 10, 2010 Board dinner, as well as other incidents Coleman had reported. The true purpose of the report, Coleman alleged, was "not to investigate [her] concerns, but to challenge her credibility."

On September 13, 2010, Coleman's attorney sent a letter responding to Blanton's final report, describing "all the factual and procedural deficiencies" regarding Blanton's "faux investigation and the final investigation report and his reckless disregard of campaign finance laws." The letter included a notice to SAMCAR that Blanton's "retaliation had taken a turn for the worse."

Coleman alleged that a number of incidents collectively constituted an " 'adverse employment action[ ],' " and that Carr withheld from Tasto, SAMCAR's president, information about Coleman's grievance, and misrepresented her grievance to the Board.

In response to Coleman's concerns about a violation of campaign finance laws, Menager wrote to Coleman's attorney on September 21, 2010, stating that Coleman had been asked only to assist in spreading word of a campaign fundraiser organized by a private party. According to Coleman, Blanton had actually directed her to arrange for SAMCAR to hold a fundraising event for a candidate, and Coleman had expressed concerns that SAMCAR might exceed legal limits on campaign donations. In subsequent correspondence, Menager allegedly "continued to disavow the potential illegality of [Blanton's] on-going directives to [Coleman]."

Coleman asked to meet with SAMCAR's leadership to discuss Blanton's "retaliatory conduct," and indicated she did not want Blanton to participate in the meeting. Menager informed her that Blanton had been designated to do so by SAMCAR's board. After Coleman informed SAMCAR about additional incidents in which she believed Blanton was retaliating against her, Menager told her the meeting could not take place until the last week of October, 2010.

On October 8, 2010, Coleman asked to be placed on administrative leave until she was able to meet in person with an advisory committee designated by the board. In response, Michelle Leu Zaccone, an attorney who worked for Carr, indicated Coleman should discuss the request directly with Blanton.

Coleman gave the Board notice on October 20, 2010, that she might file a lawsuit, and requested the preservation of all relevant evidence. Blanton sent an email on October 21, 2010, to all SAMCAR staff instructing them not to destroy any documents, and telling them to direct any questions to himself. The next day, Coleman sent a letter to SAMCAR's attorneys challenging the adequacy of the notice provided to staff and asking why Blanton was in charge of handling the preservation of evidence.

Coleman met with SAMCAR's ad hoc advisory committee on October 25, 2010. The Board members designated to serve on the committee were Anne Oliva, Philip Houston, and Diane Wilson. Four days later, Coleman was informed in a letter from Menager that she was being placed on paid administrative leave, and was not permitted to contact any SAMCAR staff. She was also told SAMCAR would hire a third party to investigate Blanton's investigation and evaluate Coleman's performance. Coleman alleged that her professional reputation was damaged because she was not permitted to do her job or to prepare her staff for her absence. She asked to be allowed to handle certain professional matters; in a response, Coleman alleges, Menager falsely stated that Coleman had requested administrative leave on October 21, 2010.

**B. The Anti-SLAPP Motions**

The Carr defendants and the SAMCAR defendants filed separate anti-SLAPP motions. The Carr defendants challenged all causes of action alleged against them, contending the complaint was based entirely on Carr's communications relating to anticipated litigation, that Coleman could not establish a probability of prevailing because her causes of action against Carr were barred by the litigation privilege, and that the civil conspiracy claim was procedurally barred. In addition, Carr demurred to the complaint. SAMCAR also filed an anti-SLAPP motion, challenging the cause of action for civil conspiracy.

In support of their motion, the Carr defendants submitted a declaration of Menager, in which she averred that Carr was SAMCAR's legal counsel during the events at issue, and that Carr anticipated and seriously considered the possibility of litigation once SAMCAR learned Coleman had retained counsel to represent her. She attached a

September 13, 2010 letter from plaintiff's counsel to her, which contained factual allegations that "largely match[ed] the substance of Plaintiff's Complaint in this lawsuit." Carr declined to represent SAMCAR in this action because the complaint included causes of action against Carr; as a result, SAMCAR had to retain other counsel for the litigation. In the attached letter, Coleman's counsel said that Blanton had made a "flawed investigation of the prevaricated" discrimination claims, that the reports Blanton placed in Coleman's personnel file were "replete with mischaracterized 'facts' and conflated false allegations," that Blanton's actions "might provide grounds for a claim of hostile work environment if the employee leaves or is discharged," and that Blanton "may very well be creating the environment of hostility that he falsely accused our client of alleging."

In support of their motion, the SAMCAR defendants submitted a declaration in which Blanton stated that Carr had acted as SAMCAR's counsel at least since his employment began in May 2010; that Zaccone, who acted as general counsel, or another attorney from her firm were typically present during executive sessions of SAMCAR's board meetings where pending or anticipated litigation was discussed; that in early May 2010, Coleman made him aware of concerns that he believed were serious and merited further discussion; that in a May 26, 2010 meeting, Coleman told Blanton, Tasto, and Vaterlaus of "highly inappropriate sexual and racial comments, sexual touching, and distress experienced by her as a result," and expressed frustration that there had been no appropriate action in response to her previous complaints; that on June 14, 2010, Coleman sent him an email expressing her desire to provide written documentation of an incident that occurred at a June 10, 2010 SAMCAR event; that he wanted to bring the issue to the Board's attention and consult counsel to prepare for possible litigation; that Menager participated in the executive session because of the possibility of employment-related litigation; that subsequent executive sessions were held in August, September, October, and November due to the anticipated litigation; that SAMCAR was regularly seeking legal advice on the matter; that the August 12, 2010 letter from Coleman's counsel confirmed his belief that litigation was imminent; and that the September 13, 2010 letter made it clear litigation was on the horizon.

The SAMCAR defendants also submitted a declaration of Anne Oliva, a member of the Board who was elected President-elect in June 2010. According to Oliva, the Board convened executive sessions only when there were personnel or privileged issues to be discussed. When the Board learned of Coleman's grievance in June 2010, it sought legal counsel from Carr, its general counsel. Menager was present at a June 23, 2010 executive session held in connection with Coleman's grievance, and between June and August 2010, SAMCAR regularly sought legal advice on the matter from Carr. The tone of the August 12, 2010 letter from Coleman's counsel led Oliva to believe litigation was imminent, a belief that was confirmed by her review of the September 13, 2010 letter from Coleman's attorney to Menager. In late September 2010, the Board voted to establish an advisory committee to investigate and manage SAMCAR's handling of Coleman's grievance. The committee acted as a conduit between members of the Board and SAMCAR's counsel, and conferred with SAMCAR's counsel about how to handle Coleman's grievance.

In opposition to the anti-SLAPP motions, Coleman submitted a declaration of Jennifer Tasto. Tasto stated that she was President of SAMCAR during the time at issue here, and that Blanton never discussed with her any concerns about a likelihood of litigation by Coleman. She was present at the May 26, 2010 meeting, and denied that Coleman complained at that meeting of sexual or racial harassment or discrimination. In June, 2010, after the incident at the June 10 Board dinner, Coleman expressed concern about what she viewed as a "personnel matter" being shared with the Board. SAMCAR did not learn Coleman had engaged an attorney until August 12, 2010. Carr did not inform Tasto of Coleman's attorney's September 13, 2010 letter until a week later, when she inquired about it after Coleman told her of the letter. She made numerous requests to Carr to be informed of Coleman's concerns, but Carr did not provide her with copies of any of Coleman's correspondence with the exception of letters of August 12 and August

18, 2010. Blanton did not explain to Tasto or the Board that Coleman's grievance concerned the propriety of Blanton's investigation of Coleman's grievances.

Coleman also submitted a request for judicial notice of (1) a brief in opposition to a motion to quash subpoenas in an unrelated case in which Blanton apparently sued a former employer, (2) Tasto's verified answer to the complaint in this action, and (3) Coleman's verified complaint.

The trial court denied the anti-SLAPP motions, ruling as to both of them that "[t]he claims as alleged do not arise from activity protected by the anti-SLAPP statute. While the manner in which the Complaint was drafted creates difficulty in ascertaining from what conduct the claims arise, it appears that they arise from some concerted effort to improperly remove Plaintiff from her employment which predates any litigation, actual or anticipated." The court sustained Carr's demurrer to the causes of action against it, with leave to amend.

## II. DISCUSSION

### A. Legal Principles

Defendants contend the trial court erred in denying their anti-SLAPP motions. "Section 425.16 applies to any cause of action arising from an ' "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue." ' (§ 425.16, subds. (b)(1), (e).) Such a claim 'shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.' (*Id.*, subd. (b)(1).) . . . [¶] The defendant has the initial burden of making a prima facie showing that the plaintiff's claims are subject to section 425.16. [Citations.] If the defendant makes that showing, the burden shifts to the plaintiff to establish a probability of prevailing, by making a prima facie showing of facts which would, if proved, support a judgment in the plaintiff's favor. [Citation.]" (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 998-999 (*ComputerXpress*).)

An "act in furtherance of a person's right to petition or free speech under the United States or California Constitution in connection with a public issue" is defined to include “any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law” and “any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law.” (§ 425.16, subds. (e)(1) & (2).) As stated in *Cabral v. Martins* (2009) 177 Cal.App.4th 471, 480, “all communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP statute. [Citations.]” These acts may include communications made in preparation for or anticipation of bringing an action, which have been held to be entitled to the benefits of section 425.16 as well as of the litigation privilege of Civil Code section 47, subdivision (b). (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115; see also *Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1263, 1268 (*Neville*); *Digerati Holdings, LLC v. Young Money Entertainment, LLC* (2011) 194 Cal.App.4th 873, 886-887.) The test for whether such a statement may be petitioning activity protected by section 425.16 is whether the statement “ ‘concern[s] the subject of the dispute’ and is made ‘in anticipation of litigation “contemplated in good faith and under serious consideration” ’ [citation].” (*Neville*, *supra*, 160 Cal.App.4th at p. 1268; see also *Bailey v. Brewer* (2011) 197 Cal.App.4th 781, 789-790.) Communications made by a party’s attorney in an attempt to reach agreement or cooperate to reach mutual goals have been found not to fall within the ambit of the anti-SLAPP statute. (*Haneline Pacific Properties, LLC v. May* (2008) 167 Cal.App.4th 311, 319-320.)

“Whether section 425.16 applies and whether the plaintiff has shown a probability of prevailing are both reviewed independently on appeal. [Citations.]” (*ComputerXpress*, *supra*, 93 Cal.App.4th at p. 999.) Our preliminary inquiry is to determine exactly what acts the plaintiff is challenging. “In doing so we review primarily the complaint, but also papers filed in opposition to the motion to the extent they might give meaning to the words in the complaint.” (*Dible v. Haight Ashbury Free Clinics, Inc.* (2009) 170 Cal.App.4th 843, 849.) Thus, “[w]e consider ‘the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based.' (§ 425.16, subd. (b)(2).) However, we neither 'weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law.' [Citation.]" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

**B. Defendants' Contentions**

Defendants contend the causes of action at issue here arise from activity protected under section 425.16 because they involve statements made in anticipation of litigation. They argue plaintiff's claims arise from alleged communications in connection with the investigation of Coleman's employment grievances and in anticipation of Coleman bringing a legal action. Those communications include: an alleged conspiracy between Blanton and the Carr defendants to misrepresent Coleman's grievance to SAMCAR in order to conceal Blanton's retaliatory misconduct and Menager's negligent and reckless approval of Blanton's investigation, which allegedly included Blanton placing false reports in Coleman's employee file; Menager's actions in "disavow[ing] the potential illegality" of Blanton's directives to Coleman and in telling Coleman she could not meet with the Board until late October, that she was being placed on administrative leave, that SAMCAR would retain a third party to investigate Blanton's response to Coleman's claims, and that the investigator would evaluate Coleman's performance; Zaccone's action in telling Coleman she should discuss her request for administrative leave directly with Blanton; and the Carr defendants' actions in withholding information about Coleman's grievance from Tasto and misrepresenting the nature of her grievance to the Board.

**C. Analysis**

Our review is guided by the rule that it is the *defendant's* burden to show the complaint arose from protected activity. (*ComputerXpress, supra*, 93 Cal.App.4th at p. 999.) To make such a showing here, defendants must show their challenged statements were "made 'in anticipation of litigation "contemplated in good faith and under serious consideration" ' [citation]." (*Neville*, *supra*, 160 Cal.App.4th at p. 1268.) To decide whether defendants have met their burden, we may look to cases construing the litigation privilege of Civil Code section 47, subdivision (b).

Our Supreme Court noted in *Flatley v. Mauro* (2006) 39 Cal.4th 299, 322-323, that although the protections of the litigation privilege and the anti-SLAPP statute are not coextensive, there is a relationship between the two statutes, and courts have "have looked to the litigation privilege as an aid in construing the scope of section 426.15, subdivision (e)(1) and (2) with respect to the first step of the two-step anti-SLAPP inquiry—that is, by examining the scope of the litigation privilege to determine whether a given communication falls within the ambit of subdivision (e)(1) and (2)." (See also *Neville, supra*, 160 Cal.App.4th at pp. 1262-1263; *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 784.) Courts have used precisely the same test—whether a statement was made in anticipation of litigation contemplated in good faith and under serious consideration—both to decide whether a statement is protected by the litigation privilege and whether it constitutes petitioning activity within the meaning of section 425.16. (See, e.g., *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1251 [litigation privilege]; *Neville*, *supra*, 160 Cal.App.4th at p. 1268 [§ 425.16]; *Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 35-36 [§ 425.16].)

In the context of the litigation privilege, the court in *Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 15, 39 (*Edwards*), explained that "to be able to take advantage of the privilege by applying it to their *own* communications, [defendants] must establish that at the time they made the subject communications, they *themselves* actually contemplated prospective litigation, seriously and in good faith. [Citations.]" Allegations that the defendants were "trying to *avoid* potential litigation by acting in a way that would induce [plaintiffs] not to pursue or even consider filing lawsuits" were insufficient. (*Ibid*.) The court went on: "[Defendants] cannot obtain the benefits of the privilege to protect their own communications merely by establishing that they anticipated a potential for litigation between themselves and [plaintiffs] arising out of some claim or dispute. . . . [T]he privilege only arises at the point in time when litigation is no longer a mere possibility, but has instead ripened into a *proposed proceeding* that is actually contemplated in good faith and under serious consideration as a means of obtaining access to the courts for the purpose of resolving the dispute. [Citation.] [Defendants'] statements to [plaintiffs] are therefore unprotected by the privilege if there is no substantial evidence that, at the time [defendants] made the alleged misrepresentations, imminent litigation was seriously proposed and actually contemplated in good faith as a means of resolving the parties' dispute." (*Ibid*.)

We also draw guidance from *Eisenberg v. Alameda Newspapers, Inc.* (1999) 74 Cal.App.4th 1359 (*Eisenberg*). There a reporter (Eisenberg) sued a newspaper, alleging a variety of claims, including defamation, after the newspaper published a retraction of an article he had written; the article had alleged that an individual involved with a housing development, Ted Fairfield, was involved in corrupt activities. (*Id*. at pp. 1365-1366.) Fairfield's attorneys wrote to the newspaper and demanded a retraction. (*Id*. at p. 1371.) In considering whether the defendant newspaper's retraction was protected by the litigation privilege because of the potential for litigation between Fairfield and the newspaper, the Court of Appeal relied on *Edwards* in noting, first, that "the 'mere possibility or subjective anticipation' of litigation is insufficient; it is necessary that there be proof of 'some *actual verbalization* of the danger that a given controversy may turn into a lawsuit . . . .' [Citation.] Second, even though '[i]t is not necessary that a party make an actual "threat" of litigation,' there must be 'a serious, good faith proposal.' [Citation.] Third, the contemplated litigation must be *imminent*. [Citation.] . . . '[B]ecause the privilege does not attach prior to the actual filing of a lawsuit unless and until litigation is seriously proposed *in good faith* for the purpose of resolving the dispute, even a threat to commence litigation will be insufficient to trigger application of the privilege if it is actually made as a means of inducing settlement of a claim, and not in good faith contemplation of a lawsuit.' " (*Id*. at pp. 1379-1380.) The court summed up: "[I]n order to take advantage of the litigation privilege, [defendants] must establish that either Fairfield or they themselves seriously and in good faith proposed imminent access to the courts as a means of resolving their dispute. [Citations.]" (*Id*. at p. 1381.) The court ruled the defendants had not met their burden, as there was no evidence that the defendant "contemplated anything more than the mere possibility that Fairfield might be considering a lawsuit"; rather, at most it appeared that they were attempting to avoid litigation by publishing the retraction. (*Ibid*.) The defendants could not "gain the protection of the privilege . . . merely by establishing that they anticipated a potential for litigation," rather than showing litigation had ripened into a " '*proposed proceeding*.' " (*Ibid*.)

On this record, we conclude defendants have not met their burden to show that at the time of the challenged statements, either Coleman or defendants "seriously and in good faith proposed imminent access to the courts as a means of resolving their dispute." (*Eisenberg*, *supra*, 74 Cal.App.4th at p. 1381.) At most, the evidence shows that after Coleman's attorney's September 13, 2010 letter to SAMCAR, defendants were aware that Coleman was alleging retaliation by Blanton. The evidence, however, does not show that the possibility of litigation had ripened into a "proposed proceeding," and there is no showing at all that defendants were contemplating access to the court. The record does not demonstrate that the causes of action at issue are based on acts taken in furtherance of defendants' right to petition or free speech. (See *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

We are not persuaded otherwise by the conclusory statements in declarations submitted in support of the anti-SLAPP motions. Menager declared that Carr "anticipated and seriously contemplated the possibility of litigation regarding [Coleman's] employment grievance once SAMCAR learned [Coleman] had retained counsel to represent her." SAMCAR submitted declarations of Blanton and Oliva stating that the August 12 and September 13, 2010, letters from Coleman's counsel led them to believe litigation was imminent. While the August 12, 2010 letter expressed Coleman's dissatisfaction with the investigation of her complaints, and the September 13, 2010 letter laid out her objections in detail, neither letter proposes litigation.[5] (Compare *Neville*, *supra*, 160 Cal.App.4th at p. 1269 [evidence established threat of impending litigation where reference line of letter in question (" 'Maxsecurity v. Mark Neville, dba ABD Audio and Video' ") suggested title of lawsuit, and letter said law office represented " 'Maxsecurity in above-matter' " and Maxsecurity would " 'aggressively pursue [] all available remedies' "].) Nor is there any indication SAMCAR itself proposed imminent court action as a means of resolving its dispute with Coleman. In the circumstances, we conclude defendants have not met their burden to show plaintiff's claims are subject to section 425.16. The trial court properly denied the anti-SLAPP motions.

## III. DISPOSITION

The order appealed from is affirmed.

---

[5] We are mindful that an employer has a duty to take some sort of action where certain kinds of allegations have been made by an employee (*Rehmani v. Superior Court* (2012) 204 Cal.App.4th 945, 952), and that the employer would be wise to consult counsel for advice and guidance regarding the matter. But we cannot thereby conclude, as was suggested at oral argument, that every investigation and consultation with counsel in such circumstances "arises out of" the right to petition. Here, the fact that a lawsuit was filed, and that it tracked the complaints raised in letters from Coleman's attorney, proves only that the matter was not resolved by the exchange of correspondence. It does not demonstrate that the lawsuit was a proposed proceeding at the time the letters were written. As in *Edwards* and *Eisenberg*, the record here indicates that the primary purpose of defendants' actions was to avoid litigation or to protect SAMCAR from liability in the event of litigation. (*Edwards, supra,* 53 Cal.App.4th p. 39; *Eisenberg, supra,* 74 Cal.App.4th p. 1381.)

RIVERA, J.

We concur:

REARDON, ACTING P. J.

SEPULVEDA, J. *

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.